REQUEST FOR APPROVAL

To:	Mark De Bie Deputy Director Waste Permitting, Compliance and Mitigation Division
From:	Wes Mindermann Supervising Waste Management Engineer Engineering Support Branch
Reviewed By:	Steve Levine, Legal Office
Request Date:	October 16, 2013
Decision Subject:	**APPROVAL OF THE CACTUS ROAD – AKA TRIPP SALVAGE DISPOSAL SITE REMEDIATION PROJECT, FACILITY NO. 37-CR-0011, SOLID WASTE DISPOSAL AND CODISPOSAL SITE CLEANUP PROGRAM (SOLID WASTE DISPOSAL TRUST FUND, FY 2012/2013)**
Action By:	October 23, 2013

Summary of Request:
The City of San Diego Development Services Department [Local Enforcement Agency (LEA)] requested the Department's assistance for the Department-managed remediation of the Cactus Road Disposal Site (site). This request is for the approval of the remediation of the site at an estimated cost of $1,600,000.

Recommendation:
Department staff has completed the evaluation and recommend the approval of the Department-managed remediation of the Cactus Road Site.

The Department, as a Responsible Agency under the California Environmental Quality Act (CEQA) certifies that it has reviewed and considered an Initial Study (IS), Mitigated Negative Declaration (MND), the addendum to the MND, and the Mitigation Monitoring and Reporting Program (MMRP) for the Cactus Road Remediation Project, San Diego County, State Clearing House (SCH) No. 2005071020, and finds these documents sufficient to support project approval. On the basis of the information and analysis in this Request for Action, and supported by the aforementioned CEQA documents, the Department hereby approves this project, as described in the MND, under the Solid Waste Disposal and Codisposal Site Cleanup Program.

Mark De Bie
Deputy Director

10/16/13
Date

Background:

Program Eligibility: The Program addresses cleanup of solid waste disposal and codisposal sites where the responsible party either cannot be identified or is unable or unwilling to pay for a timely remediation and where cleanup is needed to protect public health and safety or the environment. Cleanup projects are implemented through Department-managed contracts, grants, and loans. Staff uses adopted regulations and policies in determining site eligibility. Unless otherwise noted, actions proposed for this project are specifically eligible pursuant to the regulations.

Site Prioritization: The site is rated as an environment priority of A2. Priority A2 is a known condition of pollution or nuisance from solid waste based on comparison with state minimum standards with significant residential, industrial, park, recreation, or environmentally sensitive areas within one mile of the site.

California Environmental Quality Act (CEQA): The Cactus Road Remediation Project is considered to be a project under CEQA, which requires the preparation and certification/adoption of an environmental document whenever a project requires discretionary approval by a public agency.

The Department, acting as a Responsible Agency for the purposes of CEQA, has reviewed and considered the Initial Study/Mitigated Negative Declaration (IS/MND) as prepared by the Lead Agency, the County of San Diego, Department of Environmental Health. The project analysis concluded that any physical environmental impacts caused by the project could be mitigated to "Less than Significant or No Impact" or "Less Than Significant with Mitigation" with mitigation measures and the implementation of the Mitigation Monitoring and Reporting Program (MMRP). The MND, together with the Mitigation Monitoring Program, was adopted by the Lead Agency on September 29, 2005.

Under CEQA, the Department must consider, and avoid or substantially lessen where possible, any potentially significant environmental impacts of the proposed project. In this case, the Department is a Responsible Agency under CEQA and must utilize the environmental document prepared by the County of San Diego, Department of Environmental Health, acting as Lead Agency, absent changes in the project or the circumstances under which it will be carried out that justify the preparation of additional environmental documents and absent significant new information about the project, its impacts and the mitigation measures imposed on it.

Staff recommends that the Department, acting as a Responsible Agency under CEQA, accept the MND as prepared by the Lead Agency in that it is sufficient for project approval and there are no grounds under CEQA for the Department to prepare a subsequent or supplemental environmental document or assume the role of Lead Agency for its consideration of the proposed project. Department staff has reviewed and considered the CEQA Findings adopted by the Lead Agency. Department staff further recommends the MND, together with the CEQA finding, is adequate for the Branch Chief's environmental evaluation of the proposed project for those project activities which are within the Department's expertise and/or powers, or which are required to be carried out or approved by the Department.

Project Scope:

Site Location/Description: The site is situated approximately 15 miles southeast of downtown San Diego, and about 1.25 miles north of the United States-Mexico International Border. The site lies on the westerly side of Cactus Road, between Otay Mesa Road and Airway Road, in the Otay Mesa area. The Otay Mesa area is sparsely developed, the most notable manmade feature is Brown Field and a municipal airport located about 1,500 feet north-northeast of the site.

The Otay Mesa (the mesa) is a plateau with relatively mild topographic relief sloping to the west-southwest. The mesa is locally dissected by natural drainage courses, principally draining westward to the Pacific Ocean. The site exists at the head of Spring Canyon, a tributary of the Tijuana River.

Mr. Fred L. Tripp formerly operated Tripp Salvage at the properties from the late 1960's to the 1980's. Accepted wastes primarily consisted of material from the processing and shredding of automobiles (i.e., auto shredder waste), apparently under a disposal permit obtained from the United States Forestry Department. The auto shredder waste was placed in Spring Canyon, and intermittently covered with soil generated from onsite cuts. The cut and borrow areas were the walls of Spring Canyon, immediately downstream from the land filling operation. Additionally, from about 1977 to about 1980, approximately 42,000 cubic yards of additional fill were placed over the auto-shredder waste. The additional fill mainly consisted of soil that was again generated from onsite cuts and combined with some construction debris. Over the next decade, there was no evidence of substantial changes in the fill area of the site. Between June and July of 1987 burn dump ash waste was placed at the site. The burn ash reportedly originated from the former Rancho Carillo Municipal Landfill in Coronado, California. The burn ash was reportedly transported to Spring Canyon and disposed by Signal Landmark's independent contractors.

The Cactus Road site encompasses an area of about 33.25 acres and is irregular in plan view. Waste on the site covers about 4.1 acres. The estimated southwestern limits of waste are well constrained by remaining upper portions of the former canyon slopes and by exploratory trenching at the toe of the fill slope. The northwestern limit of waste is not as well bounded by topography. The area of the site now occupied by waste was formerly an eastward extension of Spring Canyon. The filled canyon was approximately 45 feet deep. The Cactus Road site is currently partially fenced and essentially vacant land. Topographic relief is generally described as mildly sloping to the west-southwest, except along the walls of Spring Canyon where topography is steep. The area of land filled waste is covered with sparse to moderately-thick annual grasses and weeds. The canyon bottom is host to denser phreatophyte vegetation and scattered trees. The overall relief of the immediate area of the waste fill is approximately 65 feet, with maximum elevation of about 495 feet at the easterly limits along Cactus Road, and a minimum elevation of about 430 feet in the canyon bottom at the western end of the waste fill slope. Overall surface drainage in the area is generally to the west.

Judicial, Administrative and Enforcement Actions: In 1980 the Sesi Family Trust and other investors (the owners) bought the site, which after a lot line adjustment in 2010 currently includes Assessor Parcel Numbers (APNs) 646-100-7500 and 646-100-7600, and is subject to Stipulated Notice and Order 12-01, issued May 23, 2012.

The owners subsequently asserted: (a) they bought the site with no disclosures of the site's prior use for waste disposal; and (b) the burn ash disposed of by Signal Landmark's independent contractors at the site in 1987 occurred without their knowledge or permission. Accordingly, in May 1990, certain Plaintiffs commenced a civil action against Signal Landmark and their contractors in San Diego County Superior Court (Mr. & Mrs. Salim D. Sesi, et al. v. Signal Landmark, Case No 624243). In August 1991, certain Plaintiffs commenced a civil action in the United States District Court for the Southern District of California [Mr. & Mrs. Salim D. Sesi et.al. v. Signal Landmark, et al., Case No 91-1057-IEG (M)].

In September 1993, Plaintiffs and Signal Landmark entered into the Agreement Granting Right of Access and Settlement and Release (Agreement), which released Signal Landmark from liability to the owners for any alleged deposit of wastes or other materials on the Property, defined in the Agreement as APNs 646-100-49, 646-100-59, and 646-100-70. These parcels are now APNs 646-100-7500 and 646-100-7600. The Agreement also established a $1.25 million Court-administered Trust Fund (Trust) to cover the expenses of remediating the site.

On September 25, 1996, the California Environmental Protection Agency Site Designation Committee (SDC), pursuant to Resolution 96-18, designated San Diego County Department of Environmental Health, Solid Waste Local Enforcement Agency (DEH) as the Designated Agency overseeing and coordinating the administrative remediation processes by the owners and stakeholder agencies over the site. Also, in accordance with California Health and Safety Code, Division 20, Chapter 6.65, Section 25263 an advisory team was convened by the SDC at the request of DEH for the purpose of providing guidance in overseeing the investigation and remedial action at the site.

In 1997, the City Council designated the City of San Diego Development Services Department as the Solid Waste LEA for the City of San Diego. In 1999, the LEA was certified by the State of California. However, the DEH, as Designated Agency, retained primary regulatory oversight of the site and continued coordinating the administrative processes for site remediation.

On September 26, 2005, the DEH approved the MND for Site Development Permit (SDP) Number 21967, City Project No. 1980 for the Removal Action Workplan, Sesi Property, Otay Mesa, San Diego, California (February 24, 2005). The owners agreed to each and every condition of the SDP. The SDP includes plans for grading, drainage design and capping the exposed waste material at the site, as well as mitigation measures to be complied with during construction. Implementation and completion of all of the SDP conditions would correct the violations recorded by the LEA which are subject of Notice and Order 11-02. The initial SDP expiration date was September 26, 2008.

On August 25, 2008, the first request for an extension of the SDP by the owners was granted by the DEH with the revised expiration date of September 26, 2009, because construction had not commenced. The owners asserted that the national recession created conditions making the timely construction pursuant to the SDP more difficult.

On July 10, 2009, the second request for an extension of the SDP by the owners was granted by the DEH with the revised expiration date of September 26, 2011 because construction had not commenced for the same reason as stated above.

On November 30, 2009 the owners requested a lot line adjustment from the City Development Services Department.

On July 30, 2010, the third request was made by the City Development Services Department for a two-year time extension of the SDP. On August 18, 2010, the third request for an extension of the SDP was granted by DEH with the revised expiration date of September 26, 2012 because construction had not commenced.

On October 10, 2010, new APNs 646-100-7500 and 646-100-7600 were created pursuant to a request by owners for a lot line adjustment. APN 646-100-7500 contains Spring Canyon and the largest portion of the footprint of the waste. APN 646-100-7600 is a level parcel, which the LEA and the Department assert contains a small portion of the footprint of the waste. Certain of the owners at times have denied this assertion (although it is a stipulated recital in the Order). The new parcels correspond to former APNs 646-100-49, 646-100-59, and 646-100-70 of the 2005 Removal Action Workplan and the Agreement.

On October 26, 2010, the LEA conducted a quarterly inspection of the site and cited violations of Title 27 California Code of Regulation (27 CCR), Sections 20650 – Grading of Fill Surfaces and 20820 – Drainage/Erosion Control. A copy of the inspection report was forwarded to the owners.

On November 8, 2010, the LEA provided the California Department of Resources Recycling and Recovery (Cal Recycle) with updated information regarding the site to establish a quarterly inspection frequency.

On November 23, 2010, Cal Recycle concurred with the LEA's request for a quarterly inspection frequency of the site. Accordingly, quarterly inspections of the site were conducted on January 14, 2011, June 27, 2011, September 13, 2011, December 12, 2011, March 26, 2012, June 18, 2012, September 21, 2012, December 5, 2012, March 15, 2013 and May 3, 2013. In each case the LEA cited violations of 27 CCR, Sections 20650 – Grading of Fill Surfaces and 20820 – Drainage/Erosion Control. At times the LEA also cited either as an area of concern or as a violation Section 20530 – Site Security. Copies of the inspection reports were forwarded to the owners.

On February 22, 2011, the LEA issued a Notice of Violation (NOV) to the owners for ongoing violations of 27 CCR, Sections 20650 – Grading of Fill Surfaces and 20820 – Drainage/Erosion Control at the site. The NOV directed the owners to provide the LEA with a plan for correcting the violations within 30 days of receipt of the letter.

On March 21, 2011, the owners responded to the NOV and proposed interim measures to address the violations. A plan for correcting the violations listed in the NOV was not provided.

On March 22, 2011, via email, the LEA requested that the owners provide a historical accounting of the Trust established by the Agreement to facilitate discussion of funds available to implement the SDP.

On April 27, 2011, the owners responded to the LEA's March 22, 2011 email and provided a summary of budget information regarding the funds remaining in the Trust.

On April 29, 2011, the new APNs, 646-100-7500 and 646-100-7600, were recorded with the County Recorder's Office.

On June 29, 2011, the LEA responded to issues raised by the owners in recent letters and emphasized the need for the owners to comply with the NOV.

On August 29, 2011, the LEA conducted a meeting to discuss possible funding opportunities from the Department for the implementation of the SDP. It was explained that in order for the Department to consider any loan or other remediation funding options, all owners would have to submit a Personal Financial Statement on State of California Form 604 (Statement).

On December 12, 2011, the LEA sent a letter to Salim D. Sesi to follow up on the August 29, 2011, meeting requesting a schedule to implement the SDP and a detailed description of the funding resources that will be utilized to complete the grading and construction before March 31, 2013.

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On January 10, 2012, the LEA received a letter from Richard Opper responding to the LEA's letter indicating that the owners had decided to pursue a loan from the Department in order to begin remedial action at the site. Enclosed with the letter was a handwritten note from all but one of the owners authorizing Mr. Opper to pursue a loan from the Department. The handwritten note also included the name of each owner and the percentage of their ownership in the site.

On or about January 17, 2012, the Department received a letter from Mr. Opper requesting a loan using the site as collateral. Enclosed with the letter were the Statements of five of the owners. In the letter, Mr. Opper stated that he will strive to obtain the Statements of the remaining owners.

On March 12, 2012, the LEA and the Department conducted a meeting with DSD and the owners' consultant to address outstanding permitting scheduling issues. Outstanding permitting issues include the submittal of a complete ministerial construction permit application to the City, for a Grading Permit. The owners' consultant stated that the Ministerial Construction Permit Application would be submitted in mid-April, 2012. DSD advised that each review cycle takes approximately three to four weeks. After the first review cycle, the City submits comments, if any, to the owners. The owners' consultant related that they could likely respond to such comments in two to three weeks, triggering the second review cycle of up to another three to four weeks.

On March 22, 2012, the LEA and the Department conducted a meeting with the County, DSD and the owner's representatives to address the implications of changing the cover design on project scheduling. The County advised that County CEQA 15162 review requirements would need to be met and that the County had authority to extend the September 26, 2012, SDP expiration date if this review impeded the ability of the regulatory agencies to issue all documents necessary to utilize the SDP by that date. The LEA and the Department related that given that the project has already experienced substantial delays, the potential further extension of the SDP expiration deadline to accommodate a late and thus ill-timed attempt to change the

cover design did not appear consistent with the timely implementation of curing the violations at the site and thus would have implications on enforcement and funding issues at the site.

On March 26 and 27, 2012, there were a series of discussions between the City, the owners and the Department regarding a proposal that would allow the owners to submit the Ministerial Construction Permit Application with both the current cover design as well as the proposed alternative cover design, which the City would then review in two initial review cycles. This review would occur concurrently with the County's CEQA 15162 review of the alternative cover design. The City and the owners agreed to this proposal.

On May 11, 2012 the owners excavated seven (7) test pits to evaluate the borrow source area to evaluate the borrow pit soil to determine its suitability for an alternative cover design.

On May 16, 2012 the owners submitted revised grading plan documents to the City of San Diego for review.

On May 23, 2012 the LEA issued Notice and Order (Stipulated Compliance Order) No. 12-01 to the owners.

On June 28, 2012 GeoLogic Associates submitted the Final Cover Design Report Cactus Road Closed Disposal Site, San Diego, California to the owners. The alternative final cover design was proposed by the owners to allow for utilization of onsite soil in the borrow area as a monolithic final cover that conforms to the requirement of Title 27 instead of the prescriptive cover design. This alternative final cover design was also submitted to the County DEH for CEQA review to determine substantial conformance with the prescriptive final cover design described in the SDP.

On September 4, 2012, the County DEH adopted the addendum to the Mitigated Negative Declaration which reviewed the proposed alternative final cover design and determined that were no substantial changes to the SDP with regards to the prescriptive final cover design described in the SDP.

On September 25, 2012, the City issued Grading Permit No. 275220 which initiated utilization of the SDP. The Grading Permit allows for both the Title 27 prescriptive cover design and the alternative cover design. Therefore with the utilization of the SDP prior to its expiration date of September 26, 2012, the owners complied with previous Section III, Number 5, of the original Notice and Order (Stipulated Notice and Order) No. 12-01.

As addressed in the Cost Recovery section, infra, the loan negotiations proved unfruitful and discussions turned to the subject Department-managed remediation.

Proposed Remediation Project: The project proposes to build a three foot soil cap over a two foot foundation layer over the 4.1 acres of waste fill at the site. A portion of the soil cap will originate from a designated borrow source on the property. The remaining soil cap material will come from an off-site source. A new surface drainage pattern would be created by diverting the flow of storm water to the perimeter of the soil cap. Upon placement of the soil cap, an irrigated vegetative cover would be established to help limit erosion of the new cap. Additionally, one

year of maintenance is included following the completion of construction to accommodate any settlement in the cap and repair the vegetative cover as required.

Fiscal Impacts:
Cost Estimate: The Solid Waste Disposal and Codisposal Site Cleanup Program's (Program) contractor has conducted a site visit with Program staff and developed a preliminary cost estimate of $1,600,000. Actual costs may vary depending on a variety of factors including, but not limited to the quantities and/or types of materials encountered, market forces, the required timeframes for cleanup, and competitive bids from subcontractors.

Funding: The Department-managed project will be performed on a time-and-materials basis under the Program's Southern California remediation contract (contract number DRR12033), which derives its funding from previously encumbered funds from the Solid Waste Disposal Trust Fund. The contract currently has approximately $3.2 million in available funds from the Solid Waste Disposal Trust Fund and is adequately funded to complete this project. However, at the time this Request for Approval was prepared Department staff were evaluating additional projects for consideration under the Program, which if approved could reduce the available funding in the contract to less than $1.6 million. If, due to the nature of the potential projects, Department staff determine it is necessary to complete the other projects prior to the Cactus Road site Remediation Project proposed herein, the Cactus Road site Remediation Project will proceed as soon as adequate funds are available within the contract. The next regularly scheduled transfer of funds into the contract will be July 1, 2014, or when the Fiscal Year 2014/15 Budget Act is approved, whichever is later. Work would commence at the earliest acceptable date that the funds would become available.

Cost Recovery: Public Resources Code Section 48023 directs the Department to seek reimbursement for monies expended under the Program to the extent possible. Expended funds may be recoverable from the property owners and other responsible parties in a civil action brought by the Department [Public Resources Code Section 48023(c)] and/or by imposing a lien upon the real property owned by the property owners that is subject to the remedial action [Public Resources Code Section 48023.5(a)].

Owners have demonstrated they are unable but willing to pay for the timely remediation. Additionally, the owners assuredly cannot qualify for a loan and implement the cleanup using their own contractors.

This site's unique and complex judicial, administrative and enforcement history has called for consideration of novel approaches to effectuate a remediation without undue delay and to potentially enhance cost recovery potential without protracted litigation. As related above, in the early 1990s there was substantial litigation over the funding of the estimated $1.25 million remediation and over a process for a judicially approved and County overseen implementation of the remediation (there was no City LEA at the time). As a result a fund was secured assuring that the estimated $1.25 million cost was available and dedicated to the remediation, subject to County and judicial oversight. Thus when the LEA was designated by the City in 1997, it apparently deferred to the pending County oversight over the ongoing remediation project. Moreover, since the litigation was presumably resolved, there apparently was no consideration given to the implications of effectuating a lot line adjustment designed to create a parcel free of

the waste footprint. Finally, adding to the complexity was what the owners' assert was an unforeseen, extensive, time and cost-consuming environmental process which delayed the project and substantially depleted the funding.

When the Program began actively considering the project as a candidate for a Department-funded remediation in August 2011, the Court-secured funds were already substantially depleted and the lot line adjustment was effectuated, which the owners' asserted reduced the disposal site parameters and excluded what was now a more valuable adjoining parcel from further enforcement. The LEA and the Department vigorously disputed these assertions, and there was some indication that a small portion of the footprint might remain on the adjoining parcel, but this sequence of events nevertheless added additional issues to any future contested enforcement proceedings. While a majority of the owners appeared cooperative, they asserted an inability to secure a conventional loan to cover the funding shortfall. Additionally, one minority investor was apparently alienated from the remainder of the owners and was intransigent in considering either a Department loan or a Department-managed remediation unless it was under his terms from which he would receive a financial benefit. Finally, the implications of the lot line adjustment brought uncertainty as to whether there would be sufficient disposal site value so that any Department lien would cover the remediation costs, which could lead to protracted cost recovery litigation.

In light of the above, after extensive negotiation both between the Department and the owners and the owners amongst themselves, a cost recovery arrangement has been proposed that assures a primary Department goal: that the valuable line-adjusted property be subject to the Department lien for cost recovery and that the property be sold and cost recovery reimbursed within a defined period. As the two parcels are collectively appraised at $3.269 million as of March 24, 2012, this places the Department in the best position for full reimbursement without protracted litigation.

In order to effectuate this proposal, a majority investor (Adamo Trust) has bought out the interests of the intransigent minority investor and others, securing a 2/3 majority ownership and an agreement amongst the remaining owners that he has full decision-making authority over issues relating to the remediation of the site. Under the proposal the owners agree not to encumber either parcel until a senior lien is placed on both parcels by the Department and to stipulate that they will not object to the issuance of the statutory lien. Under the proposal the Department agrees to a cost recovery amount for the cost of the remediation or $1.6 million, whichever is less (cost estimate due diligence and contingencies on this have already been discussed). The Department would further forego judicial enforcement of the lien and other cost recovery so long as the line-adjusted property is sold and the lien satisfied through close of escrow within three years of completion of the primary remediation (excluding the maintenance period). The owners may alternatively desire to enter into an Option Agreement with right to purchase (as is presently being considered), where they receive option consideration in exchange for providing the prospective purchaser up to 4 years from completion of the primary remediation to evaluate development potential prior to purchase. Under this scenario, the Department would forego judicial enforcement of the lien and other cost recovery for up to four years from the date of such an Option Agreement so long as: (a) any such option agreement is entered into within 6 months of completion of primary remediation; and (b) one-half (1/2) of all non-refundable option proceeds are used to pay down Department cost reimbursement (thus

lowering the lien amount), with the other half in part used to assure maintenance activities occur during the option period. In both cases the owners would agree to extend the statute of limitations for bringing a cost recovery action to, among other matters, foreclose on the lien commensurately.

Finally, consideration has been given to potential cost recovery against Signal Landmark and their independent contractors (collectively "Signal"). As previously addressed, this remediation is necessitated by a violation of State Minimum Standards in 1987 resulting from the placement of burn dump waste ash on the site by transporter Signal. While the subsequent litigation between the owners and Signal resulted in Signal paying out $1.25 million for the remediation and a release from further liability by the owners, such release is not binding on the Department, which could therefore pursue Signal for cost recovery as well. However, the owners have in part agreed to not contest the lien on the valuable line-adjusted property in order to avoid further costly and protracted litigation, brought against them either directly by the Department or by Signal, which if pursued would likely seek indemnification from the owners in light of the former release. As previously related, a primary Department goal has been to re-establish its' uncontested right to secure this valuable line-adjusted property as a lien, which upon sale should fully satisfy cost recovery. As this places the Department in the best position for full reimbursement without protracted litigation, cost recovery is not being pursued against Signal. (It is unclear why the former lawsuits did not include the operators/owners of generator Rancho Carrillo Municipal Landfill, but the same rationale of the Department's primary goal applies). Finally, there does not appear to be a direct, causative chain between the earlier permitted depositions of waste by Tripp Salvage and the current violations of State Minimum Standards resulting from Signal's deposition of burn ash, which necessitates this remediation. Once again, this along with the above circumstances have led to owner of Tripp Salvage, Fred L. Tripp, not being investigated or pursued.

Support:
Staff has not received any written support at the time this document was submitted for approval.

Opposition:
Staff has not received any written opposition at the time this document was submitted for approval.